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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Champion Power Equipment Incorporated,

10 Plaintiff,

11 v.

12 Generac Power Systems Incorporated,

13 Defendant.
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No. MC-25-00015-PHX-DWL

ORDER

15 Pending before the Court is a motion by non-party Gregory Montgomery
16 (“Montgomery”) to modify a deposition subpoena. (Doc. 1.) The motion is fully briefed
17 (Docs. 10, 12) and the Court concludes that oral argument is unnecessary.

18 As background, Champion Power Equipment, Inc. (“Champion”) is currently the
19 plaintiff in two different patent infringement actions. The defendant in the first action,
20 which Champion filed in the District of Arizona in November 2023, is Firman Power
21 Equipment Incorporated (“Firman”). That action is assigned to the undersigned judge. The
22 defendant in the second action, which Champion filed in the Eastern District of Wisconsin
23 in October 2024, is Generac Power Systems, Inc. (“Generac”). In both actions, Champion
24 is represented by Timothy Ziolkowski and Jacob Fritz, and certain additional attorneys
25 represent Champion only in the Firman action (or only in the Generac action). The movant
26 here, Montgomery, worked for Champion from 2005 to December 2014, then worked
27 briefly for Generac through at least April 2015, and then joined Firman in 2015, where he
28 continues to work and currently serves as the president and CEO. (Doc. 1 at 3.)

1 In April 2025, Champion served a subpoena on Montgomery to provide deposition
2 testimony in the Generac action. (*Id.*) This subpoena prompted a series of meet-and-confer
3 sessions between Montgomery’s counsel and Champion’s counsel, with Montgomery
4 expressing concern about undue burden and the possibility that he could be subjected to
5 “serial depositions covering the same events that occurred over a decade ago.” (*Id.* at 1.)
6 After the parties were unable to come to an agreement, Montgomery filed the pending
7 motion to modify—which, because Montgomery resides in Arizona, was filed in the
8 District of Arizona rather than in the Eastern District of Wisconsin, *see* Fed. R. Civ. P.
9 45(d)(3)(A)—and the motion was then transferred to the undersigned judge due to its
10 overlap with the Firman action. (Doc. 13.)

11 The Court has carefully reviewed the parties’ motion papers and appreciates their
12 thorough exploration of the issues. The Court concludes that although Champion has
13 persuasively explained why Montgomery’s testimony may be relevant and useful in both
14 actions, it has not persuasively explained why it should therefore be allowed to first depose
15 Montgomery in the later-filed action while reserving the right to depose him again in the
16 earlier-filed action without any limitation on its ability to reexamine him, during the second
17 deposition, on the same topics explored during the first deposition. Such an approach
18 would place an undue burden on Montgomery, result in unnecessary duplication, and
19 undermine Rule 1’s aim of securing the just, speedy, and inexpensive determination of
20 every action and proceeding. *See generally Tremblay v. OpenAI, Inc.*, 2024 WL 2699884,
21 *2 (N.D. Cal. 2024) (“Plaintiffs would be well advised to cooperate with Defendants in the
22 process of streamlining discovery coordination and deposition procedures across the
23 OpenAI cases given that the court is sympathetic to Defendants’ concerns about duplicative
24 depositions on the same topics constituting an avoidable burden and a waste of
25 resources.”).¹ Furthermore, given Firman’s offer to stipulate to the admissibility of

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27 ¹ Although Champion has offered to limit its examination during the first deposition
28 “to the timeframe before [Montgomery] began working at Firman,” this offer does not, in
isolation, address the Court’s concerns regarding undue burden and unnecessary
duplication because Champion will not further agree “to limit any future examination in
the Firman Lawsuit to the period after Mr. Montgomery left Generac.” (Doc. 10 at 8.)

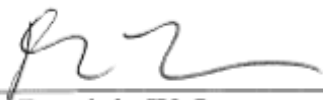
1 Montgomery's subpoenaed testimony in the Generac action for Champion's use in the
2 Firman action (Doc. 2 at 96-97), the Court agrees with Montgomery (Doc. 12 at 2) that
3 Champion's concerns about a "prejudicial gap in the testimony" are speculative and
4 unpersuasive.

5 Accordingly,

6 **IT IS ORDERED** that Montgomery's motion to modify subpoena (Doc. 1) is
7 **granted**. More specifically, Champion's deposition of Montgomery in the Generac action
8 shall be limited to the time period up to the point of Montgomery's departure from Generac;
9 Champion's deposition of Montgomery in the Firman action (if any) shall be limited to the
10 time period after Montgomery's departure from Generac; and Firman's proposed
11 stipulation in the Firman action to the admissibility of Montgomery's subpoenaed
12 testimony from the Generac action is adopted.

13 **IT IS FURTHER ORDERED** that, upon the issuance of this order, the Clerk shall
14 close this miscellaneous action.

15 Dated this 30th day of May, 2025.

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20 Dominic W. Lanza
21 United States District Judge
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